

resentencing should occur as to all counts of conviction. See Pet. Supp. Mem. (#12) at 4-6. The Court will, however, keep all sentencing options on the table if it appears that application of the “sentencing package doctrine” would result in an unwarranted sentence. As rehabilitation may be considered under Section 3553(a) on resentencing, this Court is particularly interested in petitioner’s use of his time while incarcerated, be it good or be it bad.

As to the non-Johnson claims asserted in the uncounseled petition (#1), the Court agrees with the government that petitioner’s claims of ineffective assistance of counsel and prosecutorial misconduct are time barred and that the government has properly asserted the bar as to those particular claims only. See Moon v. United States, 2016 WL 6108630 (E.D.N.C. Oct. 19, 2016). Those claims will be dismissed with prejudice.

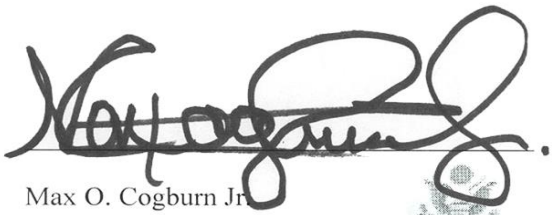
ORDER

IT IS, THEREFORE, ORDERED that petitioner’s Motion to Vacate, Correct, or Set Aside (#1), as supplemented (1#12) is **GRANTED** in part and **DENIED** in part as follows:

- (1) petitioner’s claims of ineffective assistance of counsel and prosecutorial misconduct are **DISMISSED** with prejudice as time barred; and
- (2) petitioner’s claim under Johnson and Gardner that the sentence should be vacated because he no longer has predicate offenses that qualify under the ACCA is **GRANTED**, and petitioner’s sentence is **VACATED** as to all counts of conviction, and
 - (a) the United States Probation Office shall supplement the PSR in light of such convictions no longer being ACCA predicates;

- (b) inasmuch as petitioner lodged a claim of ineffective assistance of counsel (the merits of which were not reached), the Clerk of Court shall appoint new counsel in the criminal matter for purposes of resentencing; and
- (c) the Clerk of Court shall schedule this matter for resentencing after the final revised PSR is filed.

Signed: May 22, 2017



Max O. Cogburn Jr.
United States District Judge